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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/777,079

02/13/2004

James R. Crapser

J-3894

4128

28165 7590 01/30/2007
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EXAMINER

WILSON, GREGORY A

ART UNIT

PAPER NUMBER

3749

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/30/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/777,079	Applicant(s) CRAPSER, JAMES R.	
	Examiner Gregory A. Wilson	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/27/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8, 10-12, and 15-21 are rejected under 35 U.S.C. 102(b) as being anticipated by **Miller et al (5,875,968)**. **Miller et al** discloses an evaporative device and includes a container (12) having an opening for holding a liquid, a porous wick means (including having apertures) (SEE column 3, lines 44-50) that extends through the opening (mouth of the container) and contacts the liquid while having its top part outside the liquid for exposure to the environment, a nonporous capillary member (17) which is an alternative embodiment and can be in the form of grooves to function as conduits (ie: channels) (SEE column 3, lines 25-30) inherently on its surface and is in communication with the wick and is capable of transferring liquid from the wick for dispersion into the environment. The capillary member can be considered an insert since it is capable of being removed from the wick member by sliding. The capillary member is furthermore wing shaped (it extends horizontally (SEE Figures 1-5, 7, and 8) and the materials that can make up the various components of the dispenser including the capillary member can be polyethylene (SEE column 4, lines 48-67). The housing furthermore includes a cover (25) which encases a portion of the wick.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 13, 14, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Miller et al (5,875,968)**. With regard to claims 9, 22, and 23, Miller et al does not particularly disclose the capillary member channels are V-shaped nor that they extend axially, however, it would have been an obvious matter of design choice to a person having ordinary skill in the art to modify the capillary member by having a different orientation such that the capillary effect would occur axial or more along the grooves of a V-shaped cross-section, since the applicant has not disclosed that having these particular orientations solves any stated problem or is for any particular purpose and it appears that the non-porous capillary member of Miller et al would perform equally well with any orientation as long as liquid within a containment (bottle) and having a porous wick in contact with the liquid allows the fluid to travel to the capillary member for evaporation into the atmosphere. With regard to claims 13 and 14, Miller et al discloses the applicants primary inventive concept as stated above but does not specifically recite an evaporate device having plural capillary plates. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains to have modified the evaporate device of Miller et al to

accommodate multiple capillary plates since it has been held that mere duplication of the essential working part of a device involves only routine skill in the art.

Response to Arguments

Applicant's arguments filed 11/2/06 have been fully considered but they are not persuasive. In reply to applicants response that Miller et al teaches away from using a porous wick, the examiner respectfully disagrees. With regard to column 1, lines 36-38, it is understood that the emanating region provides the wicking action since it conveys liquid by capillary action. The specification of Miller et al expressly discloses a teaching of a porous wick in that Miller et al clearly teaches the absorbent matrix (17) as this vapor emanating means which consists of a nonporous structure. The wick, which is identified as element (30) is part of container (14) (SEE column 4, lines 48-62) is in "interacting contact" with both the nonporous capillary member (17) and the liquid (22). This is regarded as the wicking device as supported by column 1, lines 33-41, including the references identified (in particular 4,286,754 & 4,413,779) which teach a wick having a porous structure.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

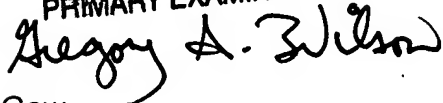
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory A. Wilson whose telephone number is (571)272-4882. The examiner can normally be reached on 7 am - 4:30 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Josiah Cocks can be reached on (571) 272-4874. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3749

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GREGORY WILSON
PRIMARY EXAMINER



Gaw

January 24, 2007